

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re NURTURE BABY FOOD LITIGATION

Master File No.: 1:21-cv-01217-MKV

This Document Relates To:

The Honorable Mary Kay Vyskocil

ALL ACTIONS

**DECLARATION OF MELISSA S. WEINER IN SUPPORT OF THE W-R
SLATE'S MOTION FOR APPOINTMENT OF INTERIM CO-LEAD COUNSEL
AND EXECUTIVE COMMITTEE**

I, Melissa S. Weiner, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am a Partner at Pearson, Simon & Warshaw, LLP ("PSW"), and I am one of the attorneys representing the Plaintiff in *Gothot v. Nurture, Inc.*, Case No. 1:21-cv-742. I am a member in good standing of the state bars of Minnesota and New York as well as numerous federal courts, including the District of Minnesota, Southern District of New York, Eastern District of New York, District of Colorado, Northern District of Illinois, and the Ninth Circuit Court of Appeals. I submit this declaration in support of my appointment as Interim Class Counsel pursuant to Federal Rule of Civil Procedure 23(g). Each of the facts set forth below is true and correct, and if called and sworn as a witness, I would competently testify thereto.

**MELISSA S. WEINER HAS RELEVANT EXPERIENCE IN PROSECUTING
CONSUMER CLASS ACTIONS**

2. I have diverse experience in class action litigation, with a particular focus on food litigation. My practice includes cases involving consumer protection, product defect, data breach, intellectual property, automotive defects, false advertising, copyright and Fair Credit Reporting Act.

3. PSW is a nationally recognized class action and antitrust law firm that has achieved appointment in some of the largest complex matters in history.

4. Personally, I am a stickler for the details and known for always delivering the high-quality work and time necessary to litigate any matter I am involved in, and as a newer leader in the bar, believe I bring a fresh perspective to the cases I litigate.

5. Since my admission to the bar in 2007¹, I have earned appointment in a variety of significant MDLs and class actions throughout the country. I presently chair the Plaintiffs' Executive Committee ("PEC") in *In Re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation*, 1:16-md-02695-JB-LF (D.N.M.). In that role, I am responsible for leading and directing pretrial matters, including the delegation of common benefit work responsibilities to the members of the PEC. I had a substantial role in strategizing and preparing the opposition to the motion to dismiss and was lead in arguing the motion to dismiss, which resulted in a 249-page order favorable to the plaintiffs. Additionally, I co-led all strategy related to class certification, which culminated with a one-week hearing in December 2020. Additionally, in a contested motion, I was appointed as Co-Lead Interim Class Counsel in *In re Fairlife Milk Products Marketing and Sales Practices Litigation*, MDL No. 2909, No. 19-cv-3924 (N.D. Ill.), a nationwide false advertising class action. I was also appointed to the Plaintiffs' Steering Committee in *In re: Blackbaud, Inc., Customer Data Breach Litigation*, MDL No. 2972 (D.S.C.).

6. Particularly relevant for this action, I have been named class counsel—and achieved significant results for consumers in deceptive labeling cases—in the following actions:

¹ I was admitted to the Minnesota Bar in 2007, and given my frequent prosecution of cases in New York, I sought admission to the New York Bar and was admitted in 2019.

- *Frohberg v. Cumberland Packing Corp.*, No. 1:14-cv-00748-KAM-RLM (E.D.N.Y.) (misleading “natural” sweetener);
- *Howerton v. Cargill, Inc.*, Civil No. 1:14-cv-00218-LEKBMK (D. Haw.) (misleading “natural” sweetener);
- *Gay v. Tom’s of Maine, Inc.*, 0:14-cv-60604-KMM (S.D. Fla.) (misleading “natural” cosmetics); and
- *Barron v. Snyder’s-Lance, Inc.*, 0:13-cv-62496-JAL (S.D. Fla.) (misleading “natural” snack foods).

7. In addition, I have been appointed to leadership positions in the following MDLs and consolidated cases:

- *In Re: Luxottica of America, Inc. Data Security Breach Litigation* (S.D. Ohio) (Appointed Interim Executive Committee Member);
- *Culbertson v. Deloitte Consulting LLP* (S.D.N.Y.) (Appointed to Plaintiffs’ Executive Committee), a nationwide data breach class action;
- *In Re: Apple Inc. App Store Simulated Casino-Style Games Litigation* (N.D. Cal.) (Appointed Interim Executive Committee Member);
- *In Re Samsung Top-Load Washing Machine Marketing, Sales Practices & Product Liability Litigation* (W.D. Okla.), (appointed to Plaintiffs’ Executive Committee), a nationwide class action regarding a design defect in 2.8 million top loading washing machines, which resulted in a nationwide settlement;
- *In Re Windsor Wood Clad Window Product Liability Litigation* (E.D. Wis.), a nationwide class action regarding allegedly defective windows, which resulted in a nationwide settlement.

8. Specifically, in *Martin v. Cargill*, I was instrumental in consolidating four separate actions filed throughout the country and played a central role in negotiating a \$6.1 million settlement—one of the largest in a “natural” food litigation.

9. Equally a consistent contributor outside the courtroom, I am a frequent lecturer at food law and litigation conferences each year.

10. I teach Food Law as an adjunct professor at Mitchell Hamline School of Law and have guest lectured several times at food law courses at both Mitchell Hamline School of Law and the Brooklyn Law School.

11. I sit on the Food Law Center Advisory Board for Mitchell Hamline School of Law, which fosters and promotes the awareness, discussion, and study of food law and regulation as it relates to the production, manufacture and consumption of food. The Center sets out to train lawyers and legal specialists in food law and provides a forum for discussion of food law-related public policy issues.

12. I volunteer my time to organizations that align with my practice and core values. Specifically, I am a Board member of Public Justice, a national nonprofit legal advocacy organization advocating for the rights of employees and consumers and presently serve as the Chair of the Development Committee. Additionally, I have served on the Food & Drug Law Counsel for the Minnesota State Bar Association and frequently speak at their FDA Forum. I am especially proud of my work as former Co-Chair for the Mass Tort and Class Action Practice Group for the Minnesota Chapter of the Federal Bar Association where in collaboration with the Bench, I helped institute new recommended procedures for inclusion of newer and diverse attorneys in key litigation roles to combat the steep decline of in-court opportunities that disproportionately impacts women, diverse attorneys and other underrepresented groups.²

² While men and women have been enrolling in law schools at roughly the same rate for decades and the percentage of women associates at larger firms is comparable to the number of men associates, the percentage of partners who are women remains below 25 percent. The percentage of diverse attorneys who are associates at larger firms has increased to almost 25 percent, yet the percentage of diverse attorneys who are partners remains below ten percent. *See Woman and Minorities at Law Firms—What Has Changed and What Has Not in the Past 25 Years*, NALP Bulletin (Feb. 2018), <https://www.nalp.org/0218research> (last visited May 27, 2021).

PSW HAS EXTENSIVE EXPERIENCE LITIGATING COMPLEX ACTIONS AND HAS ACHIEVED SIGNIFICANT RECOVERIES ON BEHALF OF CONSUMERS

13. PSW has the experience, resources and ability to adequately represent the class members in this class action lawsuit. A complete profile of PSW's attorneys and summary of the numerous complex litigation matters in which they have obtained successful results, is set forth in PSW's firm resume attached hereto as **Exhibit A**.

14. PSW's firm resume reflects that the attorneys in this case have successfully adjudicated some of the largest and most important class action lawsuits in the United States and have obtained approximately three billion dollars in settlements and verdicts in a wide range of cases.

15. For example, PSW served as Co-Lead Counsel in *In re Credit Default Swaps Antitrust Litigation*, MDL No. 2476 (S.D.N.Y.), an antitrust class action alleging an anticompetitive conspiracy by the largest international banks and financial institutions in the world to fix the price of credit default swaps. That case resulted in \$1.86 billion in settlements, making it one of the largest civil lawsuit recoveries in history.

16. PSW also served as Co-Lead Counsel on behalf of the Direct Purchaser Plaintiffs in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827 (N.D. Cal.). In that case, we helped secure a settlement of over \$400 million for the Class and obtained an \$87 million verdict, before trebling, following a five-week trial against the only remaining defendant in the case, Toshiba Corporation and its related entities.

17. PSW attorneys served as class counsel in *James v. UMG Recordings, Inc.*, Case No. 11-cv-01613-SI (N.D. Cal.) and *In re Warner Music Group Corp. Digital Downloads Litigation*, Case No. 12-cv-0559-RS (N.D. Cal.), nationwide class actions brought on behalf of recording artists and producers who alleged that they were systematically underpaid royalties by

the record companies UMG Recordings and Warner Music Group. In groundbreaking class action settlements, PSW helped secure both past relief and future relief in perpetuity for eligible class members who receive royalties from the defendant record companies.

18. PSW also served as counsel in a series of related class action lawsuits arising from the failure of major movie studios to adequately account for and pay home video revenue to profit participants, which resulted in class action settlements in the following cases:

- *Colin Higgins Productions, Ltd. v. Universal City Studios, LLC* (L.A. Super. Ct. Case No. BC499180),
- *Colin Higgins Productions, LTD. v. Paramount Pictures Corporation* (L.A. Super. Ct. Case No. BC499179),
- *Martindale, et al. v. Sony Pictures Entertainment, Inc.* (L.A. Super. Ct. Case No. BC499182); and
- *Stanley Donen Films, Inc. v. Twentieth Century Fox Film Corporation* (L.A. Super. Ct. Case No. BC499181).

19. In addition to those listed above, PSW has served as lead or co-lead counsel in some of the most advanced and cutting-edge class actions in the country, including: *In re Broiler Chicken Antitrust Litigation*, 1:16-cv-08637 (N.D. Ill.); *In re Pork Antitrust Litigation*, 0:18-cv-01776 (Minn.); *In re Lithium Ion Batteries Antitrust Litigation*, MDL No. 2420 (N.D. Cal.); *In re Potash Antitrust Litigation* (II), MDL No. 1996 (N.D. Ill.); and *In re Carrier IQ Consumer Privacy Litigation*, MDL No. 2330 (N.D. Cal.).

PSW HAS THE RESOURCES TO COMMIT TO LEADING THIS ACTION

20. As demonstrated by its recoveries aforementioned, PSW has the human, financial, and technological resources to effectively prosecute this action.

21. Furthermore, I am specifically known for my personal dedication to litigating matters in which I am appointed.

22. Attached as Exhibit B is a proposed time and expense protocol for the Court's consideration.

Dated: September 28, 2021

/s Melissa S. Weiner

Melissa S. Weiner

Attorney for Plaintiff Gothot